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LOKE YUNG HONG v. NG SEE SEE (f) AND 3 OTHERS.

[Court of Appeal (Pretheroe, Ag. C.J. Federation of Malaya, Murray-Aynsley, C.J. Singapore and Evans, J.) March 19, 1948]

[K.L. — Civil Appeal No. 22 of 1947]

Rent and Charged Land (Restriction) Enactment 1940 S. 7 — Position of subtenants where order of ejectment has been made against principal tenant for non-payment of rent when rent at a lawful rate has been in arrear for fourteen days.

In this case the appellant was the owner of a house which he leased to a tenant. The lease contained no restriction on subletting and the tenant sublet certain rooms in the house to two subtenants. In his turn one of those subtenants sublet certain rooms to two other subtenants. The four subtenants were the respondents in the appeal. The tenant fell into arrears with his rent for more than fourteen days, so the landlord brought an action against the tenant and the four subtenants claiming possession of the house. At the trial the learned Chief Justice granted the landlord possession as against the tenant, but held that as the landlord had not obtained the consent of the Rent Assessment Board to institute action against the subtenants, they were protected by Section 7 of the Rent and Charged Land (Restriction) Enactment 1940, and consequently he dismissed the suit as against them with costs. The appellant appealed against that part of the judgment which related to the subtenants.

Held, that where the tenancy of the tenant has been lawfully determined for non-payment of rent the subtenancies of all the subtenants terminated at the same moment as the tenancy of the tenant and the landlord was therefore entitled to an order for possession against all the subtenants as well as the tenant.

Cases referred to :—

(1) *Hylton v. Heal* (1921) 2 K.B. 438 at p. 446.
(2) *Athimoolam Chettiar v. Athamsah* (1946) M.L.J. 145.
(3) *Ramasamy Chettiar v. Teong Tze Meng* (1946) M.L.J. 13; (1941) F.M.S.L.R. 166.
(4) *Cottel v. Baker and Others* (1920) W.N. 46.
(5) *Hylton v. Heal* (1921) 2 K.B. 438.
(6) *Poultney v. Holmes* (1721) 1 Str. 405.
(7) *Barrett v. Rolph* (1845) 14 M. & W. 348.
(8) *Pollock v. Stacy* (1847) 9 Q.B. 1033.
(9) *Beardman v. Wilson* (1868) 4 L.R.C. p. 57.
(10) *Khoo Ee Liang and Others v. Lai Kim Tong and Others* (1947) M.L.J. 147.

APPEAL FROM THE JUDGMENT OF WILLAN C.J. (given below).

W. G. W. Hastings for the Appellant.

T. K. Sen for the Respondents.

Willan, C. J. : — The undisputed facts in this case are as follows :—

(a) The plaintiff is the owner of a two-storey house No. 16 Station Street, Kuala Lumpur, which he let to the first defendant at a rental of $75 per month in July 1942. Owing to an order of the Japanese Authorities that all rentals must be reduced to 70 per cent of the rental agreed upon between a landlord and a tenant, the rental was subsequently reduced to $55 per month.

(b) There being no restriction against sub-letting, the first defendant sub-let the first floor of the house to the third defendant and the ground floor to the fifth defendant.

(c) The third defendant, in turn, sub-let one room on the first floor to the second defendant and another room on that floor to the fourth defendant.

By a letter dated the 25th day of April, 1946, the Solicitors for the plaintiff gave the first defendant notice to quit the house on or before the 31st day of May, 1946. That notice is as follows :—

"Re House No. 16, Station Road, K.L.

We are instructed by our client, Mr. Loke Yung Hong, the landlord, to write to you with regard to the surrender of your tenancy of the above premises.

We are informed that you have agreed on various occasions to surrender but you have so far not made any attempt to carry out your promises.

We are instructed by our client to request you to surrender your tenancy on or before 31st May, 1946."

At the time that notice to quit was issued the plaintiff's contention was that the first defendant had been in arrears with his rent from and including the month of October, 1945, up to and including the month of April, 1946, i.e. for seven months. The plaint avers that the rent had been in arrears for eight months, but Mr. Hastings, for the plaintiff, admitted that is an error.

The first defendant denied that his rent had been in arrears and claimed that he had tendered rent from time to time, but that the agents of the plaintiff, namely his rent collector and his clerk, had refused to accept rent.

As to this the plaintiff, his rent collector (P.W.1) and his clerk (P.W.2) all gave evidence and produced their rent receipt books which satisfied me that the first defendant had neither paid nor tendered rent. I disbelieved the evidence of the first defendant, who called no witnesses, and immediately at the close of the evidence found as a fact that the first defendant had been in arrears with his rent for the period October 1945 to April 1946 both months inclusive. Accordingly, in view of that finding, there was no necessity for the plaintiff to obtain the permission of the Rent Assessment Board under section 7 of the Rent and Charged Land (Restriction) Enactment 1940 before instituting this suit.

It is clear from the evidence that there had been discussions, on the instructions of the plaintiff, between his rent collector and clerk, on the one hand, and the

first defendant, on the other hand, as to the possibility of the first defendant surrendering his tenancy on the offer of the plaintiff to forego the arrears of rent if such surrender was made. This is why the notice to quit takes the form it does.

Mr. T. K. Sen, for all the defendants, raised the preliminary objection that this notice is not a valid notice to quit in that it is merely in the form of a request to the first defendant to surrender his tenancy.

It is settled law that the form of a notice to quit is immaterial provided it indicates with reasonable clearness and certainty an intention on the part of a landlord to determine the tenancy of his tenant at a certain time — see *Hill and Redman* on Landlord and Tenant, 10th edition, page 446. I held the notice dated the 25th day of April, 1946, satisfied those conditions and ruled against Mr. Sen on his preliminary objection. It is clear from the letter dated the 29th day of April, 1946, sent by the then Solicitors for the first defendant to the Solicitors for the plaintiff that at that time this notice was regarded by the first defendant as a valid notice to quit. That letter is as follows :—

> **Re House No. 16, Station St., Kuala Lumpur.**
>
> Your notice NAM/LS dated the 25th instant addressed to my client, Dr. Chia Thye, of Kuala Lumpur, in connection with the above, has been handed to me with instructions to reply thereto.
>
> Re para 2 of your notice, my client denies that he has ever on any occasion agreed with your client to surrender the above premises.
>
> Re para 3 of your notice, I am instructed that it is most uncalled for at this time when there is a house-shortage and this is clearly an attempt to dispossess my client of the above.

Accordingly, having found as a fact that the first defendant had been in arrears with his rent for more than fourteen days, I give judgment in favour of the plaintiff against the first defendant only in the following terms :—

(a) Possession of premises No. 16 Station Street, Kuala Lumpur.
(b) $440 being rent of the said premises from the 1st day of October, 1945, to the 31st of May, 1946, at the rate of $55 per month.
(c) Mesne profits at the rate of $110 per month in respect of the said premises from the 1st day of June, 1946, to date on which the first defendant gives up possession.

As regards the second, third, fourth and fifth defendants, it is not disputed that they have never been in arrears with their rents, but Mr. Hastings contended that since the tenancy of the first defendant has been determined their tenancies are automatically determined as well.

As to this Mr. Hastings accepted the *onus* of attempting to convince me that my judgment in Civil Application No. 15 of 1947[10] which is a judgment on a reference by the District Judge, Selangor, under section 571 of the Civil Procedure Code, is wrong.

In that reference I decided that where the tenancy of a principal tenant is determined by a landlord on account of rent being in arrears for fourteen days, the tenancy of any sub-tenant of the principal tenant, who has not been in arrears with his rent, is not automatically determined, and that such sub-tenant, on the determination of the tenancy of the principal tenant, becomes a tenant of the landlord.

Mr. Hastings first submitted that in the absence of any special Enactment governing the relationship between landlord and tenant the determination of the principal tenancy also determines any sub-tenancy which may have been created by the principal tenant. He cited *Foa* on the Law of Landlord and Tenant, 6th edition, page 683, as an authority for that proposition. As to this there can be no dispute.

Having established that, Mr. Hastings then turned to section 7 of the Rent and Charged Land (Restriction) Enactment, 1940, which reads as follows :—

> No landlord shall without the permission of the Board in writing eject or apply to any Court for an order for the ejectment of or take any step towards ejecting his tenant from any premises to which this Enactment applies: Provided that this section shall not apply to ejectment for non-payment of rent where rent at a lawful rate has been in arrear for fourteen days.

I have underlined the word "his" in that section because I shall refer to its significance later in this judgment.

As to section 7 which I have just read, Mr. Hastings contended that since the plaintiff in this suit clearly comes within the proviso to that section, then on the wording of that proviso the whole section has no application. In short, and Mr. Hastings argued this point very persuasively, once the proviso to that section comes into operation the section has no application and therefore we are thrown back on the ordinary law which, as I have already stated, is that when the tenancy of the principal tenant is determined, automatically any sub-tenancies created by him are equally determined.

Mr. Hastings followed up this argument by citing the example set out in the case of *Hylton v. Heal*[1] that if sub-tenancies are not automatically determined on the determination of the principal tenancy, then "where a landlord has not been paid rent by his tenant, perhaps for years, and has given him notice to quit, the tenant at the last moment of his tenancy can

prevent the landlord from recovering by sub-letting to another person from whom no rent is yet due".

In addition, Mr. Hastings pointed out that by section 4 of the Increase of Rent (Restriction) Ordinance, 1939, of the Colony of Singapore, sub-tenants are deemed to be tenants of the landlord. Also, by sub-section (3) of section 15 of the Increase and Mortgage Interest (Restriction) Act, 1920, in England, there is express provision that where the tenancy of a tenant is determined, then any sub-tenant of his becomes the tenant of the landlord. Mr. Hastings argued that since the Rent and Charged Land (Restriction) Enactment, 1940 does not contain any express provisions such as those that it could not have been intended to preserve the tenancies of sub-tenants once the tenancy of the principal tenant is determined.

The answer to the argument is contained in the significance of the word 'his' in section 7 of the Rent and Charged Land (Restriction) Enactment, 1940. In the case of *Athimoolam Chettiar v. Athamsah*[2] I held :—

(a) that the word "landlord" in the Rent and Charged Land (Restriction) Enactment, 1940, includes a tenant where such tenant has rightfully sublet; and

(b) that such tenant must obtain the permission of the Rent Assessment Board before he can take any step to eject his sub-tenant.

Mr. Hastings stated that he could not contest the correctness of my decision in that case. In that case I stated at page 147 (of 12 M.L.J.) :—

> "In view of my decision on this reference that the word 'landlord' in the Enactment must mean the immediate landlord of a person, I am unable to agree with the learned Judge in that case (that is the case of **Ramasamy Chettiar v. Teung Tze Meng**[3]) that the word 'his' has no technical meaning. Since I have ruled that there must be immediate relationship of landlord and tenant and that such a relationship does exist between a tenant and his sub-tenant, the reason why the draftsman used the word 'his' in section 7 becomes apparent."

In the present case there are three landlords — the plaintiff as the immediate landlord of the first defendant, the first defendant as the immediate landlord of the third and fifth defendants, and the third defendant as the immediate landlord of the second and fourth defendants.

It cannot be disputed that if the first defendant had not been in arrears with his rent he would have been entitled to the protection of section 7 of the Rent and Charged Land (Restriction) Enactment, 1940, and the proviso to that section would not have applied to him. Therefore the plaintiff, if he had wished to commence ejectment proceedings against the first defendant, would first have had to obtain the permission of the Rent Assessment Board as a pre-requisite to instituting ejectment proceedings.

Similarly the third and fifth defendants would be protected from action by their immediate landlord (first defendant) under section 7 if they were not in arrears with their rent. Since they have never been in arrears with their rent I fail to see how they have lost the protection of section 7. Granted the first defendant has lost it because the proviso to that section applies to him in that he has been in arrears with his rent for fourteen days. But the third and fifth defendants have never been in arrears, nor the second and fourth defendants, and therefore I hold that they are entitled to the protection of section 7 until they fall into arrears with their rent for fourteen days or until the plaintiff obtains the permission of the Rent Assessment Board to institute ejectment proceedings against them.

As I stated in my judgment in Civil Application No. 15 of 1947[10], on similar facts, the relationship of landlord and tenant is created between the plaintiff and the third and fifth defendants, in respect of the first and ground floors of the house, the relationship of landlord and tenant between the third defendant on the one hand, and the second and fourth defendants on the other hand, in respect of two rooms on the first floor still subsisting. In short the plaintiff takes the place of the first defendant as the landlord of the third and fifth defendants.

Hence, in the absence of the permission of the Rent Assessment Board to institute a suit against the second, third, fourth and fifth defendants, the plaintiff's claim against them must be dismissed with costs, and I give judgment accordingly.

I might add that with regard to the example put forward by Mr. Hastings that this means that a tenant who has not paid any rent for a long time, and has been given notice to quit, would be able at the last moment to prevent the landlord from recovering possession of premises by sub-letting at the last moment, the landlord would have the right to make an application to the Rent Assessment Board for permission to bring ejectment proceedings against the person to whom the premises had been sub-let.

The Appellant Appealed.

Pretheroe, Ag. C. J. : — The facts in this case can be stated quite shortly. The appellant is the owner of a house which he leased to a tenant. The lease contained no restriction on sub-letting, and the

tenant sub-let certain rooms in the house to two sub-tenants. In his turn one of those sub-tenants sub-let certain rooms to two other sub-tenants. Thus there were four sub-tenants in all, and those four sub-tenants are the respondents in this appeal. The tenant fell into arrears with his rent for more than fourteen days, so the landlord entered an action against the tenant and the four sub-tenants claiming possession of the house. He made certain additional claims against the tenant, but the latter is not a party to this appeal, and only the position of the four sub-tenants has to be considered by this Court. At the trial the learned Chief Justice granted the landlord possession as against the tenant, but held that, as the landlord had not obtained the consent of the Rent Assessment Board to institute action against the sub-tenants, they were protected by section 7 of the Rent and Charged Land (Restriction) Enactment, 1940, and consequently he dismissed the suit as against them with costs. Against that part of the judgment which related to the sub-tenants only the landlord appealed to this Court.

This appeal is complicated by conflicting decisions on the interpretation of section 7 of the Rent and Charged Land (Restriction) Enactment, 1940, (hereinafter referred to as the Enactment). *In Ramasamy Chettiar v. Teung Tze Meng*[3] it was held that the words "his tenant" as used in section 7 of the Enactment included sub-tenants of parts of the premises. On the other hand in *Athimoolam Chettiar v. Athamsah*[2] it was held that those words only included the immediate tenant of the landlord and did not include any sub-tenants. On this point I am in agreement with the interpretation adopted in the latter case. I cannot follow the reasoning in the former case where it is stated that in this section the word "his" has not got "any technical meaning" and that the draftsman did not intend to introduce a technicality. As far as I am aware, the word "his" has only one meaning and in every case it is possessive. The Enactment provides that no landlord shall eject his tenant from any premises without first obtaining the permission of the Rent Assessment Board. "The fundamental rule of interpretation to which all others are subordinate, is that a statute is to be expounded according to the intent of those that made it, and if the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature" — (*Maxwell's* Interpretation of Statutes, page 1). I am of opinion that the words used in section 7 of the Enactment are precise and unambiguous and that the words "his tenant" mean the immediate tenant of the landlord and do not include any sub-tenants.

This interpretation appears to be supported by the provisions of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920. In that Act, although the expression "tenant" is defined as including any person from time to time deriving title under the original tenant, it was still considered necessary or desirable to make special provision in subsection (5) of section 5 to provide for the position of sub-tenants in circumstances precisely the same as in the present case.

The next point to be considered is, what is the position of sub-tenants in a case where the tenancy of the tenant has been lawfully determined? The learned Chief Justice held that as their rents were not in arrear they had not lost the protection of section 7 of the Enactment. This was a reference to the proviso to section 7 which reads as follows :—

> Provided that this section shall not apply to ejectment for non-payment of rent where rent at a lawful rate has been in arrear for fourteen days.

Now, as the section itself refers only to the immediate tenant it is difficult to understand how the proviso, or exception, to the section can refer to sub-tenants. The difficulty is increased by the fact that the proviso explicitly states that "*this section* shall not apply to ejectment" in the circumstances mentioned. I find myself, therefore, unable to agree with the learned Chief Justice with respect to the position of the sub-tenants.

As I see it, the Enactment contains no provision dealing with the position of sub-tenants when the tenancy of the tenant is terminated before the expiration of the sub-tenancies. This being the case it necessarily follows that the ordinary rules of Common Law apply, and there is no doubt that, according to those rules, all sub-tenancies terminate if, and when, the main tenancy terminates. For this reason I am of opinion that the sub-tenancies of all the respondents in this appeal terminated at the same moment as that of the tenant, and consequently that the appellant is entitled to succeed on this appeal.

I would accordingly allow the appeal against the four respondents, direct that judgment be given for the appellant granting him possession of the premises against all four respondents, and award appellant his costs against the respondents in this Court and against all the defendants in the lower Court.

Murray-Aynsley, C. J. (Singapore) : — In this case there arise two points on the construction of the

Rent and Charged Land (Restriction) Enactment (No. 14 of 1940).

The first is whether the scope of section 7 is limited to cases where there is an immediate relation of landlord and tenant or whether the expression 'his tenant' includes the case of a sub-tenant where the tenant has lawfully sub-let.

The second is as to the meaning of the proviso.

As regards the first point, I formed a conclusion on the matter in the case[3] reported in (1941) F.M.S.L.R. 166, and I am still of the same opinion. The matter is not without difficulty and I formed that conclusion after considerable hesitation. Unless protection is afforded to sub-tenants I can see no reason for including sub-tenant in the term "tenant" in the definition section.

Be this as it may, I cannot see how any protection can be given to sub-tenants in a case like the present unless the section is construed as I construed it. Assuming that I was right in 1941, the appellant cannot succeed unless he can bring the matter within the terms of the proviso.

In the present case the sub-tenants had paid their rent to the head tenant, but the head tenant was in arrear with the landlord. The words of the proviso 'rent at a lawful rate' would seem to me to include rent payable to the landlord, since, as regards the landlord, it is the only rent with which he is concerned. The rent payable by sub-tenant to head tenant is, as far as he is concerned, "*res inter alios acta*". I consider therefore that the matter is within the terms of the proviso, and the appeal should be allowed with costs.

Evans, J. : — The appellant, who was the plaintiff in the Court below, appeals against such part of the judgment of the Chief Justice, in his favour against the first defendant with an order for possession of premises known as No. 16, Station Road, Kuala Lumpur, as was against him in respect of the other four defendants, the respondents here, and in their favour on the ground that the appellant should have obtained the permission of the Rent Board to institute a suit against them and had not done so. The relationship of the defendants was explained by the Chief Justice as follows :—

> In the present case there are three landlords — the plaintiff as the immediate landlord of the first defendant, the first defendant as the immediate landlord of the third and fifth defendants, and the third defendant as the immediate landlord of the second and fourth defendants.

The first defendant was not in possession of any portion of the premises.

The decision of the case depended upon the interpretation of the provisions of Section 7 of the Rent and Charged Land (Restriction) Enactment, 1940. The appellant contended that the words "his tenant" applied to the immediate tenant of the landlord bringing the action, and similarly that the word "rent" in the proviso referred to the rent due from such tenant to his landlord. It was proved that the rent of the first defendant had been in arrears for more than fourteen days, but that the rent of the other defendants to their respective landlords was not in arrear. The learned Chief Justice also thought that the respondents were entitled to such protection as the proviso affords, and held that the rent referred to therein was the rent payable by the tenant claiming the protection.

On the question of the meaning of the expression "his tenant", there are conflicting decisions. In an early case, *Ramasamy Chettiar v. Teung Tze Meng*[3], Mr. Justice Murray-Aynsley (as he then was), in his judgment, said :—

> It has been argued on behalf of the landlord that "his" means that there must be an immediate relation of landlord and tenant and that the relation between the landlord and the sub-tenant of his tenant cannot be described as "his". I do not think the word "his" has any technical meaning and I do not suppose that the draftsman intended to introduce a technicality.
>
> In ordinary language "my tenant" means the tenant of land belonging to me. I do not think therefore that the expression "his" tenant necessarily excludes a sub-tenant; the more so when it is remembered that protection to tenants which excluded sub-tenants would be illusory.

In *Athimoolam Chettiar v. Athamsah*[2], the learned Chief Justice quoted the former paragraph above, and went on :—

> In view of my decision on this reference that the word "landlord" in the Enactment must mean the immediate landlord of a person, I am unable to agree with the learned Judge in that case that the word "his" has no technical meaning. Since I have ruled that there must be immediate relationship of landlord and tenant and that such a relationship does exist between a tenant and his sub-tenant, the reason why the draftsman used the word "his" in section 7 becomes apparent.

In the present case, the learned Chief Justice confirmed his former decision, but went on to hold that as the four respondents are not in arrears with their rent to their respective landlords, the relationship of landlord and tenant was created between the plaintiff and the third and fifth defendants.

It is not clear how this relationship arises. It clearly does not arise from the agreement of the parties nor is there any provision in the Enactment creating it. It might possibly arise by assignment, but that point does not seem to have been discussed.

The respondents referred to the case of *Cottell v. Baker and Others*[4], in which the statutory provisions applicable were those of the Imperial Acts of 1915 and 1919. The former made provision, similar to the interpretation of the local Enactment, to the effect that "The expression.... 'tenant'.... includes any person from time to time deriving a title under the original.... tenant...." This definition in the 1915 Act was held to extend the protection, given under the wording of the 1919 Act to a "a tenant" to a sub-tenant.

The appellant referred to the case of *Hylton v. Heal*[5], decided a year after the previous case on the provisions of the 1920 Act, the wording of which is not materially different in this respect from those in question in *Cottell v. Baker*[4]. In this case a tenant from year to year gave notice to quit and, with the consent of the landlord, sub-let the premises for the residue of her tenancy. At the expiration of that tenancy the landlord sought possession of the house under the provision which allowed an order for possession to be made where the tenant has given notice to quit and in consequence of that notice the landlord has contracted to let the dwelling. The landlord contended that, for the purposes of this provision, his immediate tenant was the tenant of the house and not the under-lessee who was in possession with his consent.

The ground upon which possession was sought in that case was different from that on which the landlord relies here. That case came on appeal before a Divisional Court, and Mr. Justice Rowlatt, in the course of his judgment when considering the meaning of the word "tenant" and the interpretation thereof in the light of the interpretation section, referred to the ground now under consideration, that is to say, where 'any rent lawfully due from the tenant has not been paid', and went on :—

> "Can it be said that "tenant" there includes a sub-tenant, and that where a landlord has not been paid rent by his tenant, perhaps for years, and has given him notice to quit, the tenant at the last moment of his tenancy can prevent the landlord from recovering by sub-letting to another person from whom no rent is as yet due?"

This is not mere *obiter;* it is part of the learned Judge's reason for interpreting "tenant", in the provision on which the plaintiff there relied, in its proper sense and not in that attached to it by the Interpretation Clause. *Cottell v. Baker*[4] was reported in *Weekly Notes* and marked with an asterisk as not being of sufficient importance or authority for incorporation in the *Law Reports.* The Judge there was Bailhache J. who also sat with Rowlatt J. in the Divisional Court which heard the appeal in *Hylton v. Heal*[5], and in that case Bailhache J. agreed entirely with the judgment given by Rowlatt J. I do not therefore think that any great weight can be attached to the decision in *Cottell v. Baker*[4]. Bailhache J. expressly stated that any difficulty he had found arose from special provisions for the protection of sub-tenants.

At the time of this decision the statutory protection of the sub-tenant had been heavily reinforced by provisions both that an order for possession against the tenant should not affect the right of a sub-tenant, and also that where the interest of the tenant is determined the sub-tenant should be deemed to become the tenant of the landlord. No such provisions are to be found in the local Enactment nor, on the other hand, does the expression "his tenant" appear in the English Acts. The English legislation was before the local draftsman and has in part been copied verbatim. The provision creating a *nexus* between landlord and sub-tenant is omitted and this word "his" inserted.

To my mind it is not a question of attaching any technical meaning to the words "his tenant" but of giving them their ordinary grammatical meaning as in the interpretation of statutes the Court should do. I think the use of the word "his" implies some relationship between the person to whom the adjective refers and the noun which it qualifies. I do not think it refers to a sub-tenant of whom the landlord may have no knowledge, and with whom he has no privity of estate or contract. I think anybody using the expression "his tenant" refers to a person holding of "himself". "His tenant" is a person who pays "him" rent. It is true that the interpretation section — Section 3 — is not qualified by the common expression "Where the context so requires". These words are always to be understood, since an interpretation, more especially one using the word "include" indicates an extension of the ordinary meaning which may be attached to the word. It does not mean that that extended meaning is always to be attached and that the term must never be used in its ordinary and proper meaning.

The object of the Enactment is to restrict the increase of rents, not to give indefinite protections to tenants or sub-tenants. Orders for possession are limited but this limitation is ancillary to the main object by preventing the threat of a notice to quit being used to avoid the general intention. The Enactment is an encroachment upon the landlord's legal rights and must be strictly construed.

On this first point (the meaning of "his tenant"), I am in agreement with the decision of the learned Chief Justice.

It seems to me that on analogous reasoning the reference to rent in the proviso must be to rent with which the landlord is concerned and as to which alone he can be expected to give evidence of non-payment. I see no reason for saying, on the case as it stands, that any relationship of landlord and tenant has been created between the appellant and the respondents. Under the English Acts such relationship, as I understand it, depends on the clear wording of the statutes.

It seems to me, however, that the learned Chief Justice has overlooked the fact that the head tenant in this case had parted with possession of the whole of the premises and had parted with it for a term equivalent to his own. It seems to me clear that there was no reversion remaining in the head tenant. Where a tenant disposes by deed of the whole of his interest, although the deed purports to be an under-lease, it takes effect as an assignment. Where such transfer is made on a mere verbal agreement, the effect is said not to be so certainly established, while there are cases showing both that such a transfer amounts to an assignment, and on the other hand to an under-lease. The first case usually cited is *Poultney v. Holmes*[6], in which it was held that an agreement that the grantee should have the premises for the remainder of the term must be taken as a lease and not an assignment. This case is badly reported, but it may be noticed that the argument against the lease was that the agreement was void, not being in writing, by virtue of the Statute of Frauds. The case was afterwards supported by Buller J. on the ground "that what cannot be supported as an assignment shall be good as an under-lease against the party granting it". This case was clearly disapproved of by the Barons of the Exchequer in *Barrett v. Rolph*[7]. The parties, however, did not carry that case to a final decision. Two years later *Poultney v. Holmes*[6] was followed in *Pollock v. Stacy*[8]. In this case, which was an action for use and occupation, the plaintiff had let by parole premises to the defendant till the last day of his term, reserving a weekly rent, and intended to pass the interest by lease, the defendant occupied and paid the rent for part of the period and then gave a week's notice to quit. This was not an actual claim upon a lease or for rent as a debt, and it would appear that the plaintiff had a reversion of part of the premises at least. The matter came before the full King's Bench. Lord Denman gave judgment, and in the course thereof said: "The parties intended to contract the relation of landlord and tenant and to pass the right of possession by a parole lease. This they were at liberty to do by law; and we therefore carry their lawful intentions into effect. If we were to decide that the transaction was an assignment, we should at the same time decide that it was no assignment, being by parole only; and we should construe that which was expressed and intended to be a lease to be an assignment, merely *ut res pereat*, which is against a known salutary maxim". Finally, there is the case of *Beardman v. Wilson*[9]. In this case a deed had been executed in the form of an under-lease for a term expiring on the same day as the original term. The assignee brought an action against the original lessee on a covenant to repair. The verdict was entered for the defendants, and the full Bench was moved to enter judgment for the plaintiff. The plaintiff seems to have relied almost entirely on *Pollock v. Stacy*[8] and *Poultney v. Holmes*[6]. Bovill C.J. said :—

> "No doubt the question was sought to be in some degree raised in **Pollock** v. **Stacy**[8], but there the action was brought for use and occupation, and it was not necessary that there should have been any actual demise or assignment. The only question was whether the person in occupation was liable to pay rent. There was no deed in that case which could act as an assignment, and the court say 'The parties intended to contract the relation of landlord and tenant. This they were at liberty to do by law; and we therefore carry their lawful intentions into effect.' The case was decided on its special circumstances, and is no authority in support of Mr. Pollock's contention."

Byles J. said :—

> "I am of the same opinion. I have always understood that an underlease of the whole term, though in form a lease, acts as an assignment, at least in the case where it can act as an assignment. The question what its effect is where it cannot, does not arise in this case; when it does, it may be necessary to consider further the case of **Pollock** v. **Stacy**[8]."

Keating J. said :—

> "I am of the same opinion. The facts in **Pollock** v. **Stacy**[8] were very peculiar, and it is not necessary therefore to overrule it in arriving at our judgment in this case. If, however, it really decided what Mr. Pollock contends that it does, I should not be prepared to follow it."

It seems clear that in *Pollock v. Stacy*[8] is to be found an application of the maxim *ut res magis valeat quam pereat;* and, both in that case and in *Poultney v. Holmes,* of the principle that a grant should be construed against the grantor. Neither that maxim nor that principle would apply in this country. What the courts are saying is that a grantor cannot derogate from his grant by seeking to avoid it under the terms of the Statute of Frauds and, in effect, to use that

Statute to perpetrate a fraud. In this case the question does not lie between the grantor and grantee, but between the assignee and the land owner. Moreover, the Statute of Frauds does not apply in this country and the assignment of a lease is not an agreement which would be required by the Contract Enactment to be in writing. I have no doubt that the law is as set out by Byles J. in the quotation above, and that where the under-lease or under-leases cover the whole term they must, when they can, as here, have their full effect and take effect as an assignment. This point was not argued. It seems to me clearly to arise. On this view, there would, of course, be but one rent or group of rents issuing out of the land, and they are payable by the assignees of the lease to the landlord. Between him and them is a privity of estate. Had the tenants in occupation raised the plea that they were in occupation but the rent was payable on the premises and that they were ready and willing at all times to pay the rent when due on demand, the case might have been otherwise. The plea, however, is one of payment to the first defendant. Payment to that defendant is no answer to a claim by the landlord and on the pleadings I have no doubt that judgment should be entered for the appellant with costs.

Appeal Allowed.

IN RE HAROLD LEONARD WRIGGLESWORTH.

[K.L. — Petition for Admission (Pretheroe, Ag. C.J.) May 14, 1948]

Advocates and Solicitors Ordinance, 1947, Sections 3(3) and 5(5) — Application to shorten period during which Petitioner is required to attend and receive instruction in law.

In this case the Petitioner applied that the period during which he is required by Sub-Section (3) of Section 5 of the Advocates and Solicitors Ordinance to attend and receive instruction in law in the office of a local practitioner of not less than seven years' standing, may be shortened. The Petitioner became a Solicitor's articled clerk in England on the 22nd June 1938. He continued as such till the 15th March 1940, when he joined His Majesty's Armed Forces. During his period of military service he appeared either as prosecuting officer or defending officer at numerous court martial proceedings, and on two occasions he acted as Judge Advocate. From July to September 1945, he received instruction in the laws of Malaya at a Civil Affairs Staff College. From the 10th December 1945 to the 31st March 1946 the Petitioner presided over the District Court at Kuala Lumpur. From the 1st April 1946 to 20th July 1946 he acted as District Judge for the State of Selangor and the District of Tanjong Malim. He was called to the English Bar on the 18th June 1947 and from the 30th September 1947 he attended and received instruction in the office of Messrs. Shearn, Delamore & Company.

Held, (1) that the service as an articled clerk in England prior to the Petitioner's call to the Bar in England afforded a special ground which could be advanced under Section 5(5) of the Advocates and Solicitors Ordinance 1947, as such service afforded valuable experience for an intending local practitioner; (2) that at least two special grounds must be established under Section 5(5) of the Advocates and Solicitors Ordinance 1947 before the Court could exercise its discretion and as none of the other grounds submitted on behalf of the Petitioner in this case come within the special grounds envisaged by the section, the application for shortening of the period could not be granted.

Cases referred to :—

(1) *In re Tangamani* (1942) M.L.J. 5.

(2) *In re Ahmad bin Mohamed Ibrahim* (1946) M.L.J. lxi.

(3) *In re Kim Chwee Chia* (1947) M.L.J. 108.

PETITION FOR ADMISSION.

R. V. Rintoul for the Applicant.

R. Ramani for the Bar Council.

W. G. Hastings for the Selangor and Negri Sembilan Bar Committee.

Pretheroe, Ag. C. J. : — In this motion Harold Leonard Wrigglesworth prays the Court to exercise the discretionary powers conferred on it by sub-section (5) of section 5 of the Advocates and Solicitors Ordinance, 1947, (hereinafter referred to as "the Ordinance") to shorten the period during which he is required by sub-section (3) of section 5 of the Ordinance to attend and receive instruction in law in the office of a local practitioner of not less than seven years standing. As the provisions of paragraph (c) of sub-section (3) of section 3 are applicable to Mr. Wrigglesworth's case, the period is "not less than twelve months".

The relevant facts applicable to the motion are that Mr. Wrigglesworth became a Solicitor's articled clerk in England on the 22nd June, 1938. He continued as such until the 15th March, 1940, when he joined His Majesty's Armed Forces. During his period of military service he appeared either as prosecuting officer or defending officer at numerous court martial proceedings, and on two occasions he acted as Judge Advocate. From July to September, 1945, he received instruction in the laws of Malaya at a Civil Affairs Staff College. From the 10th December, 1945, to the 31st March, 1946, Mr. Wrigglesworth presided over the first District Court at Kuala Lumpur. From the 1st April, 1946, to the 20th July of the same year he acted as District Court Judge for the State of Selangor and the District of Tanjong Malim. He was called to the English Bar on the 18th June, 1947, and from the 30th September, 1947, he has been attending, and receiving instruction